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IN THE

Supreme Court of the United States

October Term, 1961.

No. 911.

WILLIAM G. SOLER,
Petitioner,

v.

BOARD OF PUBLIC EDUCATION,
SCHOOL DISTRICT OF PHILADELPHIA,
Respondent.

On Petition for Certiorari to the Supreme Court of Pennsylvania.

BRIEF FOR RESPONDENT IN OPPOSITION.

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OPINIONS BELOW.

The Opinions in the Supreme Court of Pennsylvania are appended to the Petition for Certiorari.

JURISDICTION.

Petitioner has invoked the jurisdiction of this Court under Title 28 U. S. C., Section 1257.

Respondent submits that no question under the Constitution of the United States is raised by the dismissal of a public school teacher on the statutory ground of "incompetency" under the teachers' tenure laws of Pennsylvania after due notice of charges and hearing thereon, where the dismissal was based on the teacher's refusal to answer proper questions of his Superintendent.

The decision of the Pennsylvania Supreme Court was based on adequate non-federal grounds.

The petitioner did not raise in the Pennsylvania courts the constitutional questions urged in the Petition for Certiorari, and the Pennsylvania Courts did not decide the constitutional questions.

QUESTIONS PRESENTED.

1. Where the refusal of a teacher to answer pertinent questions of his Superintendent constitutes incompetency and ground for dismissal under state law, and there is evidence that the teacher knew of the importance of the Superintendent's inquiry and no evidence that the Superintendent explicitly warned the teacher that he might be dismissed if he failed to answer, was it a denial of due process to dismiss the teacher for refusal to answer?

2. Where a teacher was charged with incompetency in two separate charges involving different facts and the hearing Board found that the charges were sustained and dismissed the teacher, was it a denial of due process for the state Supreme Court to sustain the dismissal on the basis that one of the charges was ample to sustain the action of the Board?

3. Was it a denial of due process to find that a teacher was incompetent for refusal to answer questions of his Superintendent when the teacher informed the Superintendent that he would not answer any questions unless he was provided with all the questions so that he could take them to counsel?

4. Where a Board has dismissed a teacher on a valid ground which the state Supreme Court has sustained, will this Court determine that the action of the Board was motivated by an invalid ground?

5. Should *Beilan v. Board of Public Education*, 357 U. S. 399 (1958), be overruled?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The due process clause of the Fourteenth Amendment of the Constitution is set forth in the Petition for Certiorari.

Section 1257 of the Judicial Code of the United States, 28 U. S. C. § 1257, provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

STATEMENT

This is a proceeding under the tenure provisions of the Public School Code of the Commonwealth of Pennsylvania, Act of March 10, 1949, P. L. 30, §§ 1122 et seq., as amended, 24 Purdon's Pa. Stat. Ann. §§ 11-1122 et seq., dismissing a public school teacher.

The Board of Public Education of the School District of Philadelphia dismissed the petitioner, after a hearing and due notice of charges, on the statutory ground of incompetency. The charge was based on the refusal of petitioner to answer questions concerning alleged Communist affiliations in a professional interview with the Superintendent of Schools of the School District of Philadelphia.

At the written request of the Superintendent of Schools, petitioner reported to the Superintendent's office for a professional conference on May 28, 1953. At this conference, the Superintendent stated to the petitioner that he had information in his possession about which he would like to ask petitioner some questions, and that the material in his possession had a bearing on petitioner's loyalty (R. 7a). The Superintendent then asked the petitioner a sample question based on the information he had, whether petitioner had been an active Communist in January 1952. Petitioner said that he would not answer that question without advice of counsel, and the Superintendent agreed to give him an opportunity to consult counsel (R. 7a-8a).

Petitioner inquired as to whether the Superintendent's conference with him at that time consisted of charges against him. The Superintendent told him that he was not bringing any charges at that time and that his future course of action would be determined by the results of the conference (R. 8a).

A second interview took place on June 19, 1953 in the Superintendent's office, after petitioner had consulted counsel. At this time, petitioner said that he was not a member

of the Communist Party in January 1952, but that he would not answer any similar questions unless the Superintendent would provide him with all the questions which he intended to ask, so that he could take them to counsel for consideration (R. 8a). The Superintendent declined to give the questions to petitioner, because it was a professional conference and was not a hearing (R. 38a). Petitioner adhered to his refusal to answer any questions, and no further questions were asked. Petitioner was not frank or candid in his manner and was uncooperative with the Superintendent (R. 9a-10a). The general nature of the questions had been made clear to the petitioner at the previous interview (R. 60a-61a).

Petitioner was formally charged with incompetency based on his refusal to answer the Superintendent of Schools and, additionally, with incompetency based on refusal to answer questions before a Congressional Committee on November 17, 1953 under a claim of the privilege of the Fifth Amendment.

The Board of Public Education conducted a formal hearing on the charges as required by § 1127 of the Public School Code of 1949 (24 Purdon's Pa. Stat. Ann. §-11-1127). The hearing was private at the request of the petitioner. At the hearing, the Superintendent testified concerning his interviews with petitioner and petitioner's refusal to answer questions.

Petitioner testified at the hearing before the Board that the question which the Superintendent asked him at the first interview was whether he had been a Communist in May, 1952, which he subsequently answered in the negative. He said that he had signed the Pennsylvania Loyalty Oath in March or April of 1952 in good faith (R. 67a). He testified that he would be willing to answer questions regarding activities subsequent to the date of his Loyalty Oath, but would not answer questions as to activities prior to the date of his taking that Oath (R. 76a-77a). He had

been advised by counsel that the Superintendent did not have the right to ask him such questions (R. 78a).

The Board of Public Education found that the charges against the petitioner were sustained and ordered his dismissal (R. 109a). Petitioner appealed to the Superintendent of Public Instruction of the Commonwealth of Pennsylvania, as provided by the Public School Code, and the decision of the Board was affirmed. As further provided by the Public School Code, petitioner appealed to the Court of Common Pleas of Philadelphia County. On this appeal, petitioner did not request a hearing *de novo* as permitted on such an appeal by § 1132 of the Public School Code, 24 Purdon's Pa. Stat. Ann. § 11-1132. He filed with his appeal his Exceptions to the adjudication of the state Superintendent of Public Instruction, extracts from which are appended to the Petition for Certiorari (Appendix C, pp. 34-35), and his appeal was heard on the record of his hearing before the Board of Public Education.

The Court of Common Pleas No. 1 of Philadelphia County sustained petitioner's appeal and set aside the dismissal on the grounds that (1) the Supreme Court of Pennsylvania, in *Board of Public Education v. Intille*, 401 Pa. 1, 163 A. 2d 420 (1960) and *Board of Public Education v. Watson*, 401 Pa. 62, 163 A. 2d 60 (1960) had overruled its prior decision in *Board of Public Education v. Beilan*, 386 Pa. 82, 125 A. 2d 327 (1956), and that a teacher could not be discharged for incompetency under the Public School Code for refusal to answer questions relating to possible disloyalty, and (2) the present petitioner had not refused to answer specific questions (R. 139a-140a). The Board of Public Education appealed to the Supreme Court of Pennsylvania, which held that its decision in the *Beilan* case was still the law of Pennsylvania and had not been overruled by the *Intille* or *Watson* cases, that petitioner had in fact refused to answer questions relating to his loyalty, and that the dismissal of petitioner on the ground of incompetency under the Public School Code was warranted. The order

of the Court of Common Pleas was reversed and petitioner's dismissal was sustained.

After the decision of the Supreme Court of Pennsylvania and after the record had been returned to the Court of Common Pleas, petitioner filed with the Supreme Court of Pennsylvania a Petition for Leave to File a Petition for Reargument and a Petition for Reargument. The Supreme Court of Pennsylvania granted the Petition for Leave to File a Petition for Reargument, and, in the same order denied Petition for Reargument, without opinion.

ARGUMENT.

I. Petitioner Did Not Raise in the State Court the Constitutional Questions of Which He Now Seeks Review, and the State Court Did Not Decide the Constitutional Questions.

It is submitted that this Court is without jurisdiction under 28 U. S. C. § 1257, because the "title, right, privilege or immunity" now claimed by petitioner was not "specially set up or claimed under the Constitution . . . of . . . the United States" in the Pennsylvania courts.

It is apparent from the statement of Questions Presented for Review and The Manner in Which the Federal Questions Were Raised, as set forth in the Petition for Certiorari (pp. 2, 5) that petitioner did not raise in the state courts the particular constitutional questions which he now urges as meriting review and consideration by this Court. It is equally apparent from examination of the Opinion of the Supreme Court of Pennsylvania (Petition for Certiorari, pp. 15-25), that that Court did not consider and did not decide any questions under the Constitution of the United States.

The principal questions raised in the Supreme Court of Pennsylvania were (1) whether its decision in *Board of Public Education v. Beilan*, 386 Pa. 82, 125 A. 2d 327 (1956) [1] was still the law of Pennsylvania, and (2) whether the petitioner could be held to be "incompetent" within the meaning which the *Beilan* case had given to that term, when he had declined to answer any further questions unless he was permitted to show them to counsel and that permission had been refused by the Superintendent. Petitioner did not argue either of these questions as a matter of any right arising under the Federal Constitution. The Supreme Court of Pennsylvania resolved both issues against peti-

1. Affirmed by this Court in *Beilan v. Board of Public Education*, 357 U. S. 399 (1958).

tioner, holding that its decision in the *Beilan* case had not been overruled and was still the law of Pennsylvania, and that petitioner was incompetent in that he had refused to answer questions of his Superintendent without justification. In so deciding, the Pennsylvania Supreme Court did not decide any Federal Constitutional question, and none had been presented to it for decision.

Petitioner points to the Exceptions which he filed with his appeal to the Court of Common Pleas (Petition for Certiorari, pp. 34-35), as indication that he raised constitutional issues in the lower court. Examination of these extracts from his appeal to the Court of Common Pleas reveals that the questions of due process of law which were there referred to were not the questions on which petitioner now seeks review.

Petitioner relies mainly on his Petition for Reargument in the Supreme Court of Pennsylvania, to show that he raised the constitutional questions. The Petition for Certiorari states, "That petition was entertained by the state court, though denied without opinion" (Petition for Certiorari, p. 5).

The petitioner's Petition for Reargument (or rehearing) was not "entertained" by the Supreme Court of Pennsylvania, except in the sense that petitioner was granted an extension of time in which to file it. The Petition for Reargument was denied and no reargument or rehearing was held.

After the Supreme Court's decision and after the record had been returned to the Court below, petitioner filed a Petition for Leave to File a Petition for Reargument. The following order was entered by the Supreme Court of Pennsylvania, Per Curiam, on February 6, 1962:

> "Petition for leave to file a petition for reargument granted. Petition for reargument denied."

This Court has held that the raising of a constitutional question for the first time on a petition for rehearing ad-

dressed to the state Supreme Court is not sufficient to give this Court jurisdiction under 28 U. S. C. § 1257, unless the state Supreme Court actually entertains the petition for rehearing or reargument and considers and decides the constitutional question.

Radio Station WOW v. Johnson, 326 U. S. 120 (1945);
Herndon v. Georgia, 295 U. S. 441 (1935).

It is clear that the Supreme Court of Pennsylvania did not "entertain" the Petition for Reargument in this sense, by merely permitting it to be filed and then denying reargument.

Rule 71 of the Supreme Court of Pennsylvania provides:

> "Petitions for reargument must be made before the record is returned to the court below, unless this Court, upon cause shown, shall extend the time; and must specify particularly the point supposed to have been overlooked or misapprehended by the Court (with a proper reference to the portions of the original Brief or Record relied on to establish the fact alleged) the reasons for a rehearing, and arguments in favor thereof. Attached thereto shall be a copy of all the opinions filed in the case; and, accompanying it, a copy of all the Briefs used in the argument of the case."

Petitioner is not in a position to complain that he had no prior opportunity to raise the constitutional questions in the Pennsylvania Supreme Court, which he attempted to raise by Petition for Reargument and now desires to raise by Petition for Certiorari. The fact that petitioner was the appellee in the Supreme Court of Pennsylvania did not prevent him from raising these issues as alternate grounds for affirmance. The Supreme Court of Pennsylvania will affirm a judgment appealed to it on alternate grounds, even

though they are not the grounds relied on in the Opinion of the Court below.

> *Kopka v. Bell Telephone Company of Pennsylvania*; 371 Pa. 441, 449; 91 A. 2d 232, 235 (1952);
>
> *McCann v. Philadelphia Fairfax Corp.*, 344 Pa. 636, 26 A. 2d 540 (1942).

The Supreme Court of Pennsylvania requires the brief of an appellant to contain a Statement of Questions Involved. With respect to appellee's brief, Rule 56 of the Supreme Court of Pennsylvania provides:

> "Appellee's Brief need contain only his argument, but he may add a counter-history of the case and a counter-statement of the questions involved; unless he does so, or in his Brief otherwise challenges the history of the case or questions involved stated by appellant, it will be assumed he is satisfied with them, or with such parts of them as remain unchallenged."

Rule 59 of the Supreme Court of Pennsylvania prescribes the form of the Statement of Questions Involved and further states that "ordinarily no point will be considered which is not thus set forth in or necessarily suggested by the statement of questions involved." In *In re Dorrance's Estate*, 309 Pa. 151, 163 A. 303 (1932), certiorari was denied by this Court, 287 U. S. 660 (1932). Thereafter, the Pennsylvania Supreme Court ruled on a Petition for Reargument with a short Per Curiam Opinion in which it stated that the Court will not pass on questions of due process under the Fourteenth Amendment which are raised in a Petition for Reargument when they are not the theory on which the case was argued, that no federal question involved was presented in the record or briefs or oral argument, and none was considered or decided. 172 A. 900 (1933). Certiorari was again denied by this Court, 288 U. S. 617 (1933).

Therefore, the denial of the present petitioner's Petition for Reargument by the Supreme Court of Pennsylvania rested on adequate state grounds.

Petitioner cannot claim that the decision of the Supreme Court of Pennsylvania was such a surprise to him that he had no adequate opportunity to raise the constitutional issues. It was surely foreseeable that the Pennsylvania Supreme Court would adhere to its previously expressed rule of *Board of Public Education v. Beilan*, 386 Pa. 82, 125 A. 2d 327 (1956) and decide the question of the state law against petitioner as it did. Petitioner was the original appellant from his dismissal by the Board of Public Education and from the action of the state Superintendent of Public Instruction affirming that dismissal. On appeal from the adjudication of the state Superintendent to the Court of Common Pleas, petitioner filed Exceptions, extracts from which are printed in the Petition for Certiorari (pp. 34-35). In these Exceptions, petitioner raised constitutional questions of due process, which are not the same as the constitutional questions on which he now seeks review and which were never raised in the state courts. The alleged right to have counsel advise him as to the propriety and legality of the questions of his Superintendent was raised (No. 15, pp. 34-35), but it was not raised as a constitutional right.

II. The Constitutional Questions Raised by Petitioner Are Insubstantial.

1. The Contention That Petitioner Was Not Notified of the Authority Under Which He Was Being Questioned or Warned That Refusal to Answer Might Result in Dismissal Does Not Present a Substantial Constitutional Question.

Petitioner was called for a personal interview with his administrative superior, the Superintendent of Schools of the School District of Philadelphia. The Superintendent

informed petitioner that he desired to ask questions that had a bearing on petitioner's loyalty. The Superintendent asked petitioner a sample question based on this information, which was whether petitioner had been an active Communist in January 1952. Petitioner said that he would not answer that question without advice of counsel, and the Superintendent agreed to give him an opportunity to consult counsel. Petitioner also inquired whether the Superintendent's conference with him consisted of charges against him and he was told that there were no charges against him and that the Superintendent's future course of action would be determined by the results of the conference (R. 7a-8a).

Under these circumstances, there can be no doubt that petitioner fully understood that the inquiry was important and that the Superintendent considered it important that it be answered. Petitioner has never contended that he was under any misapprehension as to its importance. He testified that he said to the Superintendent that this indeed was a serious matter (R. 67a). Certainly no further explicit warning that refusal to answer questions could lead to dismissal was necessary.

Petitioner was dismissed for incompetency under the Pennsylvania Public School Code. The incompetency consisted of lack of candor in refusing to answer important questions relating to his professional fitness asked by his superior, the Superintendent of Schools.

The Supreme Court of Pennsylvania did not deal explicitly with the contentions that petitioner was not notified of the authority under which he was being questioned or warned that refusal to answer might result in dismissal. Petitioner never raised these questions, as a matter of either state law or federal constitutional law.

The Pennsylvania Supreme Court was fully warranted in assuming that petitioner thoroughly understood the importance of the inquiry of the Superintendent and the necessity of responding to it, and in concluding that he was prop-

erly found to be incompetent because of his refusal to answer. In all material respects, the case of the present petitioner is the same as that of *Board of Public Education v. Beilan*, 386 Pa. 82, 125 A. 2d 327 (1956), affirmed 357 U. S. 399 (1958). The fact that there was no evidence that petitioner was explicitly warned of the consequences of refusal is not a material distinction.

Accordingly, this question is not a substantial one for this Court, even if it had been raised by the petitioner in the state courts.

2. The Contention That the Decision of the School Board to Dismiss Petitioner Rested on Both His Refusal to Answer the Superintendent and on His Plea of Self-Incrimination Before a Congressional Committee Does Not Present a Substantial Constitutional Question.

There were two charges of incompetency against the petitioner before the Board of Public Education, (1) that he refused to answer the Superintendent of Schools in a professional interview on June 19, 1953 and (2) that he refused to answer questions before a Congressional Committee on November 17, 1953 under a claim of privilege of the Fifth Amendment. After hearing on both charges, the Board of Public Education found both charges to be sustained and ordered petitioner's dismissal.

The Supreme Court of Pennsylvania ultimately affirmed petitioner's dismissal on the basis that the first charge was amply sustained as a ground for dismissal under the state law, irrespective of the second ground. Respondent did not urge before the Supreme Court of Pennsylvania that petitioner could be dismissed for refusal to answer the Congressional Committee, as that Court had held in *Board of Public Education v. Intille*, 401 Pa. 1, 163 A. 2d 420 (1960), that a teacher could not be dismissed for incompetency solely on the ground of his claim of the Fifth Amendment privilege before the Congressional Committee.

In holding that the dismissal on the valid ground of refusal to answer the Superintendent of Schools in a professional interview was sustained without regard to the validity of the additional charge that had also been sustained by the Board, the Supreme Court of Pennsylvania adopted the identical position which it took in *Board of Public Education v. Beilan*, 386 Pa. 82, 125 A. 2d 327 (1956), in which it likewise sustained the dismissal for incompetency on the ground of failure to answer the Superintendent of Schools and found it unnecessary to pass on an additional charge against the teacher for claiming the Fifth Amendment privilege before the Congressional Committee.

The decision in the *Beilan* case was affirmed by this Court in *Beilan v. Board of Public Education*, 357 U. S. 399 (1958), with specific attention to this point (357 U. S. 402). As this Court there pointed out, the holding as a matter of state law that a dismissal can be sustained if the Court finds support for any one of the multiple grounds relied upon by the dismissing School Board does not violate due process. The jurisdiction of this Court is over the Pennsylvania Supreme Court, and this Court considers only the ground relied upon by the Pennsylvania Supreme Court.

The Petition for Certiorari attacks this Court's position in *Beilan* as fallacious in stating that the Court of Common Pleas exercises *de novo* review of dismissals under the Pennsylvania statute, because hearing *de novo* is held only at the request of the dismissed teacher, and no such request was made either in the *Beilan* case or the present one.

We believe that the point of the reference by this Court to the fact that the Pennsylvania courts exercise *de novo* review of dismissals is not merely to the right of the teacher to a hearing *de novo*, but also to the broad power of the reviewing court. Whether the court review of the administrative decision to dismiss the teacher is by trial *de novo* or on the record of hearing before the Board of Public Education, the powers of the reviewing court are plenary. Sec-

tion 1132 of the Pennsylvania Public School Code, 24 Purdon's Pa. Stat. Ann. § 11-1132 provides that "the court shall make whatever order it considers just, either affirming or reversing the action of the Superintendent of Public Education, and stating plainly whether the professional employee is to be discharged or is to be retained." The powers of the Supreme Court of Pennsylvania on its review of the lower court's decision are not less.

As this Court said in the *Beilan* case (357 U. S. 402), "This allocation of functions between the Pennsylvania courts and administrative agencies does not violate due process. Accordingly, it is necessary for us to consider only the one ground relied upon by the Pennsylvania Supreme Court."

Furthermore, the effect of the teacher's right to a hearing *de novo* in the Court of Common Pleas is that objections to the procedure in the hearing before the Board of Public Education are immaterial when the teacher has the right to a hearing *de novo*, but has not asked for it. The Pennsylvania courts have so held in reviewing proceedings where the right to a hearing *de novo* has been waived by not requesting it.

Albert Appeal, 372 Pa. 13, 22; 92 A. 2d 663, 667 (1952);

Commonwealth v. Cronin, 336 Pa. 469, 474; 9 A. 2d 408, 411 (1939).

In any event, the contention of petitioner that this question involves the decision of this Court in *Stromberg v. California*, 283 U. S. 359 (1931) and the cases following it is incorrect. In *Stromberg* and the other cases cited, jury verdicts in criminal cases were set aside because the juries had been instructed that the defendants could be found guilty on alternative grounds, when one of the alternative charges submitted was invalid, and it was impossible to determine from their general verdicts whether they rested on an invalid ground which they should not have considered.

Even if it were assumed that such a principle was applicable to the findings of a state administrative body, for which there is no authority, the fact is that the Board of Public Education did not find the petitioner incompetent in the alternative, but found that both charges against the petitioner were sustained. Its findings were embodied in the adoption of a resolution that the *charges* against petitioner had been sustained and that he be discharged as a professional employee (R. 109a). In other words, the findings were conjunctive, and not disjunctive as were the verdicts in the *Stromberg* and other cases. Accordingly, the record shows in the present case that the Board of Public Education found petitioner incompetent for having refused to answer the Superintendent of Schools, and it was unnecessary for the Supreme Court of Pennsylvania to consider the possible invalidity of any additional grounds.

As this Court pointed out in the *Beilan* case (357 U. S. 402), the Pennsylvania Supreme Court so held also in *Beilan* and this decision was in accordance with the earlier decision in *Brown Case*, 347 Pa. 418, 32 A. 2d 565 (1943), affirming 151 Pa. Super. 522, 30 A. 2d 726.

There is no occasion for reconsidering in the present case what was so well decided in the *Beilan* case.

3. The Contention That the Dismissal for Incompetency Violated Due Process When Based on the Teacher's Statement That He Would Not Answer Questions of His Superior Unless Given the Opportunity to Consult Counsel About Them Does Not Raise a Substantial Constitutional Question.

Petitioner was informed by the Superintendent at the first interview that the Superintendent desired to question him about loyalty, and he was told what one of the questions was, as a sample. He asked leave to consult counsel before deciding whether to answer, and this request was granted by the Superintendent. At the second interview, petitioner demanded, as a condition which he imposed on

his willingness to consider any further questions, that all the questions be given to him in advance so that he could consult counsel again about each and every question. The Superintendent declined such permission.

In disposing of petitioner's contention that he had the right to consult counsel before he was required to answer similar questions, the Supreme Court of Pennsylvania pointed out that he was not on trial, but was being questioned by his administrative superior in private. He had no right to be represented by counsel or to demand a list of questions to be asked in a professional interview with his superior. The Court held that it would be unreasonable to allow a teacher to insist that such an interview with a superior should be on the teacher's terms, because this contention ignored and negated the proper relationship between a teacher and his superior (Opinion, Petition for Certiorari, p. 25).

In so holding, the Supreme Court of Pennsylvania did not refer to any question of due process under the Constitution, as the petitioner had not claimed the right to consult counsel before answering his superior as a constitutional right.

Even if it had been so claimed, the Supreme Court of Pennsylvania was on solid constitutional ground in determining that a teacher does not have the right to counsel in a professional interview with his Superintendent, and that it would thwart the purpose of such interviews to allow the teacher to lay down his own terms as to how the interview will be conducted. It was manifest from the record that the Superintendent desired to *discuss* with petitioner the matters involved and the questions he desired to ask him, not merely to obtain answers to questions, but also to observe the manner in which the teacher conducted himself in the interview, his frankness, candor and truthfulness as related to his fitness. The teacher well knew the nature of the questions which he would be asked. To have acceded to his demand that he consult counsel again and again about

all questions would have defeated the prime purpose of the interview.

Petitioner had the full benefit of counsel at his hearing on charges before the Board of Public Education, and he was even given the opportunity to consult counsel before he decided whether to answer the Superintendent's first question.

We do not know of any case holding that an employee is entitled to counsel in an interview with his superior or employer. To suggest that there is a substantial constitutional question as to whether such a right exists would indeed ignore the relationship of cooperation and candor which should exist between a teacher and his superior.

4. The Contention That Petitioner's Dismissal Was Actually Motivated by His Plea of Self-Incrimination Before a Congressional Committee Does Not Raise a Substantial Constitutional Question.

In spite of the fact that the Board found the petitioner incompetent for refusal to answer his Superintendent, petitioner contends that his dismissal was actually motivated by the fact that he had pleaded a privilege before the Congressional Committee. In so contending, petitioner recognizes that his case in this respect is exactly the same as that in *Beilan v. Board of Public Education*, 357 U. S. 399 (1958), and that the same contention was explicitly rejected by the majority of this Court in *Beilan*.

The petitioner's question No. 4 does not raise any matter distinct from his question No. 2 which has already been considered.

There is no reason for this Court to reconsider its decision in the *Beilan* case.

5. The Contention That Beilan v. Board of Public Education, 357 U. S. 399 (1958), Should be Overruled Does Not Raise a Substantial Question.

Petitioner contends that this Court's well considered decision in *Beilan v. Board of Public Education* should be reconsidered and overruled.

The decision of this Court in the *Beilan* case was in accordance with its decision in *Lerner v. Casey*, 357 U. S. 468 (1958), which was argued at the same time and decided on the same date as the *Beilan* case. The *Lerner* decision sustained the discharge of a New York subway conductor on the ground of refusal to answer questions asked him by the representative of his public employer.

Beilan and *Lerner* were followed by this Court in *Nelson v. County of Los Angeles*, 362 U. S. 1, 7 (1960).

All of the questions involved had the careful consideration of this Court in these cases. There is no substantial reason for reconsideration of the conclusions reached.

CONCLUSION.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

EDWARD B. SOKEN,
Attorney for Respondent.